

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

***ENERGY FACILITY SITING BOARD***

**DRAFT Minutes of Open Meeting Held October 3, 2016 2:00 PM**

**Board Members Present:** Margaret E. Curran, Janet L. Coit, Parag Agrawal

**Board Staff Present:** Todd Bianco, Coordinator; Patricia Lucarelli, Board Counsel; Susan Forcier, DEM Counsel

**Chairperson Curran called the meeting to order at 2:04 PM in Hearing Room A of the Public Utilities Commission offices building. A quorum of the Energy Facility Siting Board (Board) was present.<sup>1</sup>**

The first item of business was approval of the minutes of the Board's open meeting held on June 2, 2016. Associate Director Agrawal moved to approve the minutes; Director Coit seconded. The draft minutes were approved. **Vote 3-0.**

Chairperson Curran introduced the next item of business: motions filed in Docket No. SB-2015-06 – Invenergy Thermal Development LLC's (Invenergy) Application to Construct the Clear River Energy Center Power Plant in Burrillville, Rhode Island. Chairperson Curran noted, for the record, that Pascoag Utility District' motion to intervene had been withdrawn and was no longer before the Board.

Motion to Intervene Filed by Harrisville Fire District. The Board discussed the merits of Harrisville Fire District's motion to intervene. Chairperson Curran noted that Harrisville's motion was based on the applicant's original water supply proposal, which was no longer a possibility. She further noted that the applicant's future water proposal might warrant Harrisville's intervention. For these reasons, she suggested the Board deny the motion without prejudice. Director Coit agreed. Harrisville's attorney offered comment, but Chairperson Curran reminded him that the Board was not hearing arguments at the Open Meeting. Director Coit reiterated her position, and moved to deny intervention without prejudice. Associate Director Agrawal seconded. The Board unanimously denied without prejudice Harrisville's motion to intervene. **Vote 3-0.**

Chairperson Curran then noted for the record that the Town of Burrillville's motion for clarification regarding the Tax Assessor's advisory opinion had been withdrawn and was no longer before the Board.

Invenergy's Motion for Protective Treatment of Attachments to Hardy Testimony and Motion for Protective Treatment of Invenergy's Responses to Office of Energy Resources Second Set of Data Request. The Board discussed the merits of Invenergy's two motions for protective treatment. Chairperson Curran explained that there were no objections and that both sets of information fell under the exception for commercial trade secrets in Rhode Island's Access to Public Records Act. Associate Director Agrawal moved to approve the motion for protective treatment of attachments

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<sup>1</sup> A stenographer was present to record the meeting. Please contact Allied Court Reporters at 888-443-3767 if you wish to purchase a copy of the transcript.

RH2 and RH3 of the Hardy testimony. Director Coit seconded. The Board approved the motion for protective treatment. **Vote 3-0.**

Associate Director Agrawal then moved to approve the motion for protective treatment of Invenenergy's responses to OER's second set of data requests. Director Coit seconded. The Board approved the motion for protective treatment. **Vote 3-0.**

Motion to Change the Location of Final Hearings Filed by Town of Burrillville. The Board discussed the merits of Burrillville's motion. Chairperson Curran noted that she disagreed with Burrillville's contention in the motion that the number of hearing attendees between the Board and parties would not allow room for members of the public. She added, however, that the Board staff was working on a means to broadcast the hearings live to the public and suggested that the motion be held until it was determined whether the broadcasting could occur. She asked the Board Coordinator for an update.

The Coordinator explained that staff in the Public Utilities Commission building were nearing completion of short term solutions for an online streaming option and a public cable television option, both of which would be operational within two weeks. A long-term solution was also in the works. Director Coit voiced concerns over moving the hearing location as well as concerns over the public needing an opportunity to view the hearings and expressed satisfaction that live broadcast options were nearing completion. Associate Director Agrawal cited the importance of fairness and transparency in the siting process and said that live broadcasting would serve that purpose.

Director Coit asked Chairperson Curran if she was intending to leave the motion pending, and Chairperson Curran replied that this was her intention.

Discussion of Other Issues Related to Docket No. SB-2015-06. Chairperson Curran noted for the record that motions to dismiss filed by Burrillville and the Conservation Law Foundation were pending and scheduled for oral argument on October 13, 2016.

Chairperson Curran then explained that Invenenergy had been granted a thirty-day extension on the proceeding schedule based on the loss of their water supply plan when Pascoag determined it would not supply water to Invenenergy from a contaminated and closed well. She then invited discussion.

Director Coit suggested the Board consider if the current timeline, extended by thirty days, continued to make sense. She noted it had been six weeks since Pascoag terminated the letter of intent for the water supply, that the gap in information on a water supply plan was large, and that the statutory schedule of final hearings would require proceeding with an incomplete application. She then noted that the Board's Rule 1.15(a) provides for a show cause order and suspension process, if the applicant is out of compliance with Board rules. She suggested the Board consider suspension, and issue Invenenergy a show cause order to explain why the proceedings should not be suspended on the grounds that the lack of a water supply for the plant rendered the application incomplete.

Associate Director Agrawal agreed with Director Coit's suggestion to issue the show cause order, noting the importance of the water supply issue. Chairperson Curran also agreed.

Director Coit suggested the suspension hearing be held on October 13, 2016, when the oral arguments on dismissal had been previously scheduled. Counsel Lucarelli confirmed that the date would work with the Board's rules on show cause orders, and that the Board could set forth in the

order the specific issue and conditions related to the suspension. Associate Director Agrawal asked what steps would follow issuance of the show cause order. Counsel Lucarelli explained that a suspension hearing would be held at which the applicant would be required to appear and show cause why the proceedings should not (or should) be suspended. For the Board to lift the suspension, if one was ordered the applicant would have to prove it was in compliance. She added that time would not be counted against the statutory schedule during suspension.

Director Coit expressed concern with not being able to anticipate how much time parties would need to respond to a water supply plan with so little information on what the plan would be. Associate Director Agrawal suggested she offer a motion. Director Coit moved that the Board issue a show cause order to Invenergy to appear and show cause why the proceedings should not be suspended until such time as its noncompliance might be rectified. Associate Director Agrawal seconded. The Board approved the show cause order. **Vote 3-0.**

Director Coit reiterated her suggestion that the hearing time on October 13, 2016 be used for the suspension hearing, rather than for oral argument on the motions to dismiss. Chairperson Curran agreed. Director Coit expressed that absent a water supply plan in the near future, one thing the applicant should provide, is a description of what the Board could expect in terms information that would allow proceedings to continue.

Director Coit noted the public's interest in knowing the date of the next public comment hearing and suggested that the date be left open until after a water supply plan is known.

Coordinator Bianco noted for the record that the Board's other active docket, SB-2016-01, would be proceeding. He cautioned members of the public not to confuse those proceedings with the current docket's schedule. Counselor Lucarelli explained that, in fact, the applicant in that other docket, National Grid, had also requested a delay in its proceeding, SB-2106-01.

Director Coit then directed Board staff to prepare a press release regarding the Board's decision.

Associate Director Agrawal moved to adjourn. Director Coit seconded, and the meeting was adjourned. **Vote 3-0.**

**The open meeting adjourned at 2:41 PM.**